

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

John Alfred Rucker,

Plaintiff,

v.

Case No. 2:14-cv-411

Frazier Health Center, et al.,

Defendants.

OPINION AND ORDER

Plaintiff, a former state inmate, filed the instant civil rights action pursuant to 42 U.S.C. §1983, alleging that defendants Frazier Health Center, a unit of the Pickaway Correctional Institution where plaintiff had been confined, and the Ohio Department of Rehabilitation and Corrections failed to treat his serious medical condition in violation of his rights under the Eighth and Fourteenth Amendments. On August 12, 2014, defendants moved to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim for which relief could be granted. Defendants argued that this federal court action was barred by the Eleventh Amendment. Plaintiff filed no response to the motion to dismiss.

On October 23, 2014, the magistrate judge issued a report and recommendation concerning the motion to dismiss. See Doc. 16. The magistrate judge noted that the Eleventh Amendment of the United States Constitution bars federal court jurisdiction when a private citizen sues a state or its instrumentalities unless the state has given express consent. Doc. 16, p. 3 (citing Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89, 100 (1983) and Lawson v. Shelby County, 211 F.3d 311, 334 (6th Cir. 2000)). The magistrate judge

further observed that §1983 does not abrogate the Eleventh Amendment. Doc. 16, p. 3 (citing Quern v. Jordan, 440 U.S. 332, 341 91979)). Rather, the State of Ohio has only consented to waive immunity to suit in the Ohio Court of Claims. See Ohio Rev. Code §2743.02. The magistrate judge concluded that the Ohio Department of Rehabilitation and Corrections, a state agency, and Pickaway Correctional Institution, of which Frazier Health Center was a part, were instrumentalities of the State of Ohio. The magistrate judge then found that because plaintiff's claims against these defendants were barred by the Eleventh Amendment, his complaint failed to state a claim for which relief could be granted. Doc. 16, p. 3.

The report and recommendation specifically advised the parties that the failure to object to the report and recommendation within fourteen days "will result in a waiver of the right to de novo review by the District Judge and waiver of the right to appeal the judgment of the District Court." Doc. 16, p. 4. The time period for filing objections to the report and recommendation has expired, and no objections have been filed.

The court adopts the report and recommendation (Doc. 16). Defendants' motion to dismiss (Doc. 14) for failure to state a claim on the ground of the Eleventh Amendment bar to federal court jurisdiction is granted. This action is hereby dismissed.

Date: November 19, 2014

s/James L. Graham
James L. Graham
United States District Judge